

REMARKS/ARGUMENTS

The Status of the Claims.

Claims 1-43 are pending with entry of this amendment, claims 1 and 4 being amended herein. These amendments introduce no new matter and support is replete throughout the specification. These amendments are made without prejudice and are not to be construed as abandonment of the previously claimed subject matter or agreement with any objection or rejection of record.

Applicants submit that one of skill in the art would readily understand that the process of "collecting an NMR spectrum" involves collecting NMR data that are subsequently Fourier transformed to produce the NMR spectrum. However, in the interest of furthering prosecution, Applications have amended claim 1 to specifically recite the Fourier transformation of the NMR data. Support for this process can be found throughout the specification in, for example, paragraphs 0033-0035, paragraph 0068, and Example 2 (paragraph 0075).

Claim 4 has been amended to correct a typographical error.

Applicants submit that no new matter has been added to the application by way of the above Amendment. Accordingly, entry of the Amendment is respectfully requested.

The Information Disclosure Statement.

Applicants note with appreciation the Examiner's thorough consideration of the references cited in the Information Disclosure Statement (Form 1449) submitted on December 5, 2003.

35 U.S.C. §102.

The claims are novel over Schenz et al

Claims 1-5 and 10-12 were rejected under 35 U.S.C. §102(b) as allegedly anticipated by Schenz et al. (USPN 5,270,650). Applicants traverse.

In order for a reference to anticipate an invention, the reference must teach each and every element of the claimed invention. Claim 1 is drawn to a method of analyzing one or more contents of a sealed consumables container, including the steps of: collecting NMR data and generating a Fourier-transformed NMR spectrum; and analyzing one or more peaks in the NMR spectrum.

Schenz is alleged to disclose a method for analyzing the contents of a sealed container by NMR spectroscopy. However, Schenz does not teach or disclose each element of the claimed invention. For example, Schenz does not analyze individual peaks in a Fourier-transformed NMR spectrum. Rather, the cited art examines the effect that bacteria have on the pH, and thus on the T1 and/or T2 values, of the solvent (i.e., water). Schenz is looking directly at the time domain and measuring differences in the relaxation times of the free induction decay (FID) of the solvent (see column 5, lines 4-10, 17-18, 46-47 and 66-67). As noted in Figures 1-5, the signal intensity of the entire FID (not an individual resonance/peak) is being plotted versus time or microbial count. As such, the art does not teach or disclose a method involving analyzing one or more peaks in a Fourier transformed NMR spectrum, as provided in the present invention. The cited art actually teaches away from examination of the transformed data (see column 4, lines 10-11, in which Schenz instructs “inverse transformation” of spectra to generate the FID for analysis).

Since the reference does not teach or disclose every element of the claimed invention, Applicants submit that the rejection is improper and respectfully request that the rejection be withdrawn.

Applicants did invent the claimed subject matter

Claims 1-43 were rejected under 35 U.S.C. §102(f) as allegedly belonging to a different inventive entity. Applicants submit that the correct inventors have been provided in the subject application, and note that authorship of a publication is unrelated to inventorship. Furthermore, Applicants note that the priority date of the subject application is July 17, 2002, while the cited art was published in 2003. As such, Applicants submit that the rejection is inappropriate and respectfully request that it be withdrawn.

Appl. No. 10/622,008
Amdt. Dated June 23, 2004
Reply to Office action of March 11, 2004

CONCLUSION

In view of the foregoing, Applicants believes all claims now pending in this application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the claims are deemed not to be in condition for allowance after consideration of this Response, **a telephone interview with the Examiner is hereby requested.** Please telephone the undersigned at (510) 337-7871 to schedule an interview.

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Respectfully submitted,



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Attachments:

- 1) A petition to extend the period of response for **1** month;
- 2) A transmittal sheet;
- 3) A fee transmittal sheet; and
- 4) A receipt indication postcard.